TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 1730 - SB 1842

April 13, 2016

SUMMARY OF ORIGINAL BILL: Increases, from 30 to 45 days, the time period in which a health care institution is required to notify the Health Services and Developmental Agency (HSDA) prior to any change in ownership.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (015533, 016015): Amendment 015533 deletes all language of the original bill. Exempts certain health care institutions, other than hospitals, from the current requirement to apply and obtain a certificate of need prior to any modification, renovation, or addition to the facility which requires a capital expenditure of $2,000,000 or more. Exempts hospitals from the current requirement to obtain a certificate of need prior to any modification, renovation, or addition which requires a capital expenditure of $5,000,000 or more. Exempts certificate of need requirements for acquisition of major medical equipment, initiation of health care services for extracorporeal lithotripsy, swing beds, discontinuation of any obstetrical or maternity service, establishment of a satellite emergency department facility by a hospital at a location other than the hospital's main campus and magnetic resonance imaging (MRI); provided, a certificate of need is required for the initiation of any health care services for MRI in any county with a population in excess of 250,000 for the purpose of providing MRI services to pediatric patients or for any county with a population of 250,000 or less for all patients, according to the 2010 federal census or any subsequent federal census. Exempts the construction, development, establishment, or modification of birthing centers from requiring a certificate of need. Requires an outpatient diagnostic center, upon obtaining a certificate of need, to become accredited by the American College of Radiology within a time period as defined by the Health Services and Development Agency. Requires a certificate of need prior to increasing the number of MRI machines, except when the purpose is to replace or decommission an existing machine. Creates a new reporting requirement for persons which hold certificates of need for MRI services. Requires a certificate of need prior to the initiation of a health care service for organ transplantation; however, exempts from this requirement any organ transplant program approved by the United Network of Organ Sharing (UNOS) by July 1, 2016, and that has initiated organ transplantation services by January 1, 2017. Authorizes a hospital, rehabilitation facility, or mental health hospital to increase its total number of licensed beds by up to ten percent of its licensed capacity at any one campus over a period of one year without obtaining a certificate of need.

Authorizes any applicant to a certificate of need, whose application has been denied, to request a refund equal to twenty-five percent of the examination fee. Requires the Health Services and Development Agency, in consultation with the Division of Health Planning, the Board for Licensing Health Care Facilities or the Department of Mental Health and Substance Abuse Services, and relevant stakeholders, to develop quality measures applicable to holders of certificates of need. Any certificate holder found in violation of a quality measure will be reported to the Board for Licensing Health Care Facilities or the Department of Mental Health and Substance Abuse Services for appropriate discipline, including a civil penalty of at least $100, but no more than $500 for each instance of violation, and possible revocation of the respective certificate of need.

Requires the Health Services and Development Agency to set fees by rule, in amounts which offset the cost of administering the Agency's duties. Requires a separate account be created within the General Fund which holds collections of civil penalties and fees from, but not limited to, applications of certificates of need, subscriptions, project cost overruns, copying, and contested cases. Establishes that funds remaining in the account at fiscal year-end shall not revert to the General Fund, but remain available for appropriate expenditures.

Amendment 016015 adds new language to the bill as amended by 015533 without making any substantive changes.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue – Exceeds $786,500/HSDA Account

Decrease State Expenditures – Net Impact –$1,138,800/General Fund

Increase State Expenditures - $1,204,300/HSDA Account

Increase Federal Expenditures – Exceeds $86,500

Increase Local Expenditures – Exceeds $1,100*

Other Fiscal Impact – There will be a shift of current fee revenue from the General Fund to the HSDA Account in an amount estimated to be $417,844. The total revenue in the HSDA Account is estimated to be $1,204,300 ($786,456 increased fee revenue + $417,844 current fee revenue) in FY16-17. Fee revenue will be adjusted to an amount sufficient to cover any expenses of the HSDA in future years.

Assumptions for the bill as amended:

- An effective date of July 1, 2016.
- This proposed legislation as amended will result in a decrease in certificate of need (CON) applications filed with the Health Services and Development Agency (HSDA).

- Based on information provided by HSDA, the agency has received between 51 and 67 CON applications annually since 2012. HSDA estimates the reduction of CON applications will result in a net decrease in recurring application fee revenue to the General Fund of approximately $410,000.
- The bill as amended requires the HSDA to charge fees sufficient to remain self-supporting. Currently, the HSDA receives an appropriation for personnel and operating expenses and all revenue collected is deposited into the General Fund. The provisions of the bill will result in the following:
    - A decrease in General Fund expenditures of $1,204,300 based on the Governor's FY16-17 budget document;
    - A shift of General Fund revenue in the amount of $417,844 to the HSDA account based on the average amount of fee revenue deposited over the previous seven fiscal years of $827,844 minus the net decrease of $410,000 in fee revenue proposed by the bill as amended;
    - An increase in revenue to the HSDA account in an amount exceeding $786,456 ($1,204,300 budget amount – $417,844 fee revenue); and
    - An increase in expenditures to the HSDA account estimated to be $1,204,300 based on the current spending authority of the agency (average expenditures have been $1,052,314 over the previous seven fiscal years).
- According to HSDA, a CON application will typically include more than one reason for applying. After a review of applications from 2012 to present, the agency found several that included services to be eliminated by the bill as amended that would have been filed anyway due to the other services included in the application. There are also a few additional CON requirements included in the proposed legislation that offset some of the reduction in workload associated with the reduced number of applications.
- Based on the application filing fees, the CON applications being eliminated account for a disproportionate share of the workload completed by the HSDA. It is assumed that any effect on the Agency's current responsibilities will not significantly affect the overall workload of the HSDA.
- According to a 2016 working paper of George Mason University's Mercatus Center, a decrease in CON requirements will lead to higher utilization of MRI services; however, this increase in utilization varies between hospital and non-hospital settings, where self-referrals are more likely to take place for imaging services. Further, the study could find no support for the hypothesis that the volume of services provided in hospitals is negatively affected by CON policies, but it did find that market entry for nonhospital providers is limited by CON requirements.
- Assuming the provisions of the bill as amended will result in higher utilization of MRI services in non-hospital settings, it is difficult to determine the exact impact that will have on total expenditures to TennCare and the state sponsored health plans.
- While increased utilization will result in increased costs, the study also noted that "hospitals in CON states may attract consumers who would otherwise prefer to travel to a nonhospital provider but who were limited by lower accessibility in CON states."
- If there were a shift from hospital utilization to non-hospital utilization, it is assumed there would be some decrease in expenditures for those claims.

- Also, it is difficult to determine how the prior approval and utilization review policies of both the TennCare and state sponsored health plans will play into the increased utilization for MRI services.
- Due to the number of unknowns and the differences in the plans, it is assumed there will be at least a one percent increase in TennCare costs and at least a two percent increase in costs to the state sponsored health plans.
- The proposed legislation will impact the adult populations living in counties having a population greater than 200,000.
- According to TennCare, there are currently 279 MRI machines in Tennessee.
- According to TennCare, in the five counties with a population greater than 250,000 (Shelby, Davidson, Knox, Rutherford, and Hamilton), there are 150 MRI machines.
- CON requirements will still be applicable in the larger counties for MRI services provided to pediatric patients.
- According to TennCare, approximately 10 of the 150 MRI machines in the five most populous counties are used for pediatrics; therefore, in the five most populous counties there are approximately 140 MRI machines used for adult populations.
- According to TennCare, the average annual expenditures attributed to MRI scans statewide is $26,521,980 based on FY12-13, FY13-14, and FY14-15 expenditures [($27,313,505 + $25,373,185 + 26,879,249) / 3 years].
- An average cost per MRI machine of $95,061 ($26,521,980 / 279 MRI machines).
- A total increase in costs to TennCare of $133,085 (140 machines x $95,061 x 1.0 percent).
- Of the $133,085, $46,602 will be state funds at 35.017 percent and $86,483 will be federal funds at a 64.983 percent match rate.
- According to the Department of Finance and Administration, Division of Benefits Administration, MRI claims for the five counties averaged $1,597,287 over FY12-13, FY13-14, and FY14-15 [($1,755,528 + $1,521,078 + $1,515,255) / 3 years].
- It is estimated that the State Employee, Local Education, and Local Government health plans will incur at least a two percent increase in expenditures across the three plans estimated to be $31,946 ($1,597,287 x 2.0 percent).
- This amount is applied to the three plans as follows:
- State Employee Health Plan is $17,251 ($31,946 x 0.54);
- Local Education Plan is $12,459 ($31,946 x 0.39);
- Local Government Plan is $2,236 ($31,946 x 0.07).
- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in an increase in state expenditures of at least $13,801 ($17,251 x 0.80).
- The state portion of the Local Education Plan is 45 percent for Local Education instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The increase in state expenditures is estimated to be at least $5,139 [($12,459 x 0.75 x 0.45) + ($12,459 x 0.25 x 0.30)].
- Each local government that participates in the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will contribute at least 50 percent of the cost resulting in an increase in local expenditures that will exceed $1,118 ($2,236 x 0.50).

- A net recurring decrease in General Fund state expenditures of $1,138,758 [$1,204,300 - ($46,602 + $13,801 + $5,139)].
- A recurring increase in federal expenditures of $86,483.
- A recurring increase in local expenditures of $1,118.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee

Krista M. Lee, Executive Director

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